the statement alleging that the lottery had been carried on with the assistance of, and primarily support by, Police personnel, the names of some of whom he specifically mentioned. He was then fined $100/- or one month's imprisonment. The Prosecuting Officer himself then asked for a copy of the statement made by the accused so that it might be referred to the Police Authorities presumably for further investigation. Presumably such statement was investigated and, in the opinion of the Investigating Authorities, found to be untrue. Hence the charge against the accused.

It is of fundamental importance to observe the offending statement made by the accused was made by him upon allocutus and before sentence, that is to say, it was made by him after he had pleaded guilty to the charge of assisting in carrying on a public lottery and in the exercise of his undoubted right to be heard in mitigation of sentence before punishment was imposed upon him. His plea, that Police personnel in general, and certain specified ones in particular, formed part of his clientele was no doubt put forward as a matter which, at any rate in his mind, was intended to provide some sort of a defence or excuse to show the circumstances in which he had been carrying on the lottery. Once it is accepted that what was said by him was said in an attempt to influence the mind of the Magistrate and to persuade him to inflict a punishment lighter than he would otherwise have done, it is wholly irrelevant that his statement also implicated, whether truthfully or otherwise, Police personnel. An unsworn statement made in such circumstances is privileged and the statement itself cannot be the subject matter of a further charge. The position would undoubtedly have been different if, after the fine had been imposed, the accused had asked to see the Magistrate and, of his own volition, made a statement implicating named Police personnel as assisting him in the carrying on of the lottery. But that was not what happened. The conviction must accordingly be quashed, the fine set aside, and such part of it as may have been paid refunded to the accused.

Order accordingly.

NG KWEE PIOW v. REG.

[C. C. A. (Rose C.J., Tan Ah Tah and Chua JJ.) September 27, 1960]

[Singapore — Criminal Appeal No. 16 of 1960]

Criminal Law and Procedure — Caution — Witness of insufficient intelligence not cautioned in express terms — Oaths Ordinance (Cap. 8), s.5(2) — Whether irregularity or illegality.

Criminal Procedure — English law — Application of — Criminal Procedure Code (Cap. 132), s.5.

Evidence — Corroboration — uncorroborated evidence of an unintelligent girl.

The appellant was convicted by a majority verdict of the jury of robbery and abetment of rape. The case for the prosecution depended on the uncorroborated testimony of a girl of some 17 or 18 years of age whom the learned Judge considered to be of insufficient intelligence to be sworn or affirmed.

On appeal, it was urged on behalf of the appellant that section 5(2) of the Oaths Ordinance was not complied with in that the witness was not cautioned, in express terms, "to speak the truth, the whole truth and nothing but the truth," in accordance with the requirements of the sub-section; secondly that by virtue of the provision of section 5 of the Criminal Procedure Code, the provisions of section 38(1) of the Children and Young Persons Act, 1933 should be imposed into the law of Singapore and lastly that the conviction on the uncorroborated evidence of a child should not be allowed to stand.

Held: (1) the caution laid down in section 5(2) of the Oaths Ordinance was not given in the form prescribed by the section; that however is merely an irregularity and not an illegality and is therefore a proper subject for the exercise of the discretion referred to in the proviso to section 6(1) of the Court of Criminal Appeal Ordinance (Cap. 129);

(2) section 5 of the Criminal Procedure Code is limited to matters of criminal procedure and therefore cannot fairly be held to extend to matters of evidence. The law applicable to Singapore on the question of corroboration of the unsworn evidence of a child is the same in this respect as that applicable to India and is correctly stated in the Privy Council case of *Mohamed Sugal Esa Mamasan Rer Alalah* v. *The King* (1);

(3) in the light of the special factors in this case, it is eminently a case in which any jury should hesitate long before relying upon the entirely uncorroborated evidence of an unintelligent girl. The evidence in this case was by no means strong and was such that it required the very closest examination before acceptance. In this light it was unfortunate that the learned trial Judge qualified or put a gloss upon, his very necessary warning that in practice corroboration in such a case is always looked for. It should be accepted now in criminal courts that the rule of prudence is one of such practical good sense that it should only be departed from in the most exceptional case and it can certainly not be said that this case is such a case. While no doubt the jury took an adverse view of the appellant and by their verdict expressed their satisfaction of his guilt, it is considered that this is a case, for reasons already given, where it is unsafe to allow the conviction to stand.

Cases referred to:—

(1) *Mohamed Sugal Esa Mamasan Rer Alalah* v. *The King* [1946] A.C. 57, at p. 62.

(2) *Dennis Gammon* (1959), 43 Cr. App. R. 155.

CRIMINAL APPEAL.

David Marshall for the appellant.

A. W. Ghows (Ag. Senior Crown Counsel) for the respondent.

Rose C.J.: The appellant was convicted by a majority verdict of the jury of robbery and abetment of rape.

The case for the prosecution depended on the uncorroborated testimony of a girl of some 17 or 18 years of age whom the learned Judge considered to be of insufficient intelligence to be sworn or affirmed.

The first point taken on behalf of the appellant is that section 5(2) of the Oaths Ordinance was not complied with in that the witness was not cautioned, in express terms, "to speak the truth, the whole truth, and nothing but the truth", in accordance with the requirements of the subsection. It was pointed out that whereas irregularities in the form of an oath or affirmation are saved by section 9 of the Ordinance,

there is no such saving clause as regards persons admitted to give evidence not on oath or affirmation.

We had the advantage of listening to a reading of the shorthand note relating to the administration of the caution to the witness by the learned trial Judge. The extract satisfied us both as to the unintelligence of the witness and as to the fact that the learned Judge had satisfied himself that the witness understood the importance of speaking the truth.

The caution, however, was not given (according to the shorthand note) in the form prescribed by the section. That, however, in our opinion, is merely an irregularity and not an illegality and is therefore a proper subject for the exercise of the discretion referred to in the proviso to section 6(1) of the Court of Criminal Appeal Ordinance.

Learned counsel for the appellant further contends that, irrespective of the view previously held in these Courts and those of the Federation, unsworn evidence from a child or person of immature age must be corroborated by some other material evidence implicating the accused. The basis for this submission is that the law in this country is different from the law of, for example, India, in that in the latter country there is no equivalent to section 5 of our Criminal Procedure Code.

"5. As regards matters of criminal procedure for which no special provision has been made by this Code or by any other law for the time being in force in the Colony the law relating to criminal procedure for the time being in force in England shall be applied so far as the same does not conflict or is not inconsistent with this Code and can be made auxiliary thereto".

And it is suggested that by virtue of this section the provisions of section 38(1) of the Children and Young Persons Act, 1933 should be imported into the law of Singapore.

While we do not necessarily suggest that the result would be undesirable, we are unable to accede to the submission as section 5 is limited to matters of criminal procedure and therefore cannot, in our opinion, fairly be held to extend to the matter under consideration.

We consider, therefore, that the law applicable to Singapore, which is the same in this respect as that applicable to India, is correctly stated by Lord Goddard in the Privy Council case of *Mohamed Sugal Esa Mamasan Rer Alalah* v. *The King*,[1] at page 62, where Lord Goddard says:—

"It was also submitted on behalf of the appellant that assuming the unsworn evidence was admissible the court could not act on it unless it was corroborated. In England, where provision has been made for the reception of unsworn evidence from a child, it has always been provided that the evidence must be corroborated in some material particular implicating the accused. But in the Indian Act there is no such provision, and the evidence is made admissible whether corroborated or not. Once there is admissible evidence a court can act upon it; corroboration, unless required by statute, goes only to the weight and value of the evidence. It is a sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law".

In any event we would observe that even if the provisions of section 38(1) of the Children and Young Persons Act were applicable to Singapore, they would not seem to cover the complainant in the present case, as it would appear that she is neither a "child" nor a "young person" within the meaning of the English Statute but a person of "immature age" within the meaning of section 5(2) of the Oaths Ordinance.

The last sentence of the passage from Lord Goddard's judgment quoted above is of general application; but we would add that the rule of prudence requiring the corroboration of the unsworn evidence of a child or, no doubt, of a person of immature age would seem to need to be applied with special strictness in the case of sexual offences.

The complainant's story is that on the afternoon of the 3rd of October 1959 while she was in the compound of her parents' house together with her three younger brothers three male Chinese entered the compound. Of these three two were strangers and the third was the appellant, a youth of seventeen, of puny physique. The appellant and one of the two strangers then climbed over the partition of the house, thereby gaining entry to it. The third person remained outside. The stranger and the appellant then dragged the complainant into her bedroom where after undressing her the stranger raped her while the appellant held her down.

Thereafter, the story goes, the stranger seized her by the throat to prevent her crying out, while the appellant helped himself to $120 in cash which was kept in a box in the complainant's room. It is relevant to observe that none of this money was traced to the appellant.

The robbery was complained of promptly but the rape not until 13 days later.

It is common ground that there was absolutely no corroboration of the complainant's evidence; and this position was accepted by the learned Judge in his summing-up.

As to the robbery, no details were given in the prosecution case of the circumstances in which this quite substantial sum — having regard to the status of the family concerned — was present in the house that day. Neither the complainant herself nor her mother nor either of the Inspectors of Police adverted to the matter. It was only when the father of the appellant was called for the defence that he mentioned a conversation which he had had with Inspector Chan (one of the two Inspectors called for the prosecution), in which the Inspector stated that this $120 represented the proceeds from a sale of pigs.

There was no evidence adduced on behalf of the prosecution that the appellant was ever aware of this sale, if it in fact took place. The only reference to this matter on the record being, as we have said, an observation by the appellant's father that Inspector Chan had made a statement to this effect.

As to the rape, the evidence of Dr. Ogle must, of course be examined. He saw the complainant on two occasions; first, three days after the episode when he examined the complainant in the context of her report that she had been robbed and found a bruise about 1″ in diameter just above the right knee. This, he said, could have been caused by any blunt object, as, indeed, it obviously could.

It was not until the 16th of October (thirteen days after the alleged episode) that he examined the complainant in the context of an allegation of rape and he then stated that he found no sign of violence on the body. In the vagina there was a small tear on the posterior aspect of the right side of the hymen, which, he said, could have been caused by the entry of the male organ into the vagina. The injury was not tender and had healed. He added that this injury could have been caused one year before his examination and certainly longer than one week before, which means, in effect, that it could have been incurred at any time during the year previous to the episode complained of.

It is to be noted that the doctor's evidence lent no support to the theory that the complainant had been raped by anyone at all, either on the 3rd of October or indeed at any time, but was merely indicative of the fact that the girl was no longer a virgin and that her virginity had probably been lost at some period during the preceding year.

The negative nature of Dr. Ogle's findings seem to us to assume greater significance in the light of the complainant's story of a violent sexual assault upon her. Her struggles inferentially necessitated, according to her, the active intervention of the appellant in order to enable the stranger to achieve his purpose. Also at one stage in the history of the matter the complainant took up the position that the bruise on her leg was caused with her coming into contact with a table during the struggle prior to her being raped. One is disposed, perhaps, to comment that in the light of this picture of violence it is odd that the doctor's examination, albeit some 13 days after the occurrence, yielded so negative a result.

On the face of it the complainant's story that this stranger, who apparently had the initiative to rape her, required the physical assistance of this diminutive appellant would seem to be unlikely. Moreover the stranger has not been apprehended and even his identity still remains unknown.

In the light of these factors this would seem eminently to be a case in which any jury should hesitate long before acting upon the entirely uncorroborated evidence of this unintelligent girl.

It is true that the learned trial judge on more than one occasion directed the jury that they should not convict unless they were sure that the complainant was speaking the truth. At page 5 of his charge, however, he says:—

> The sole and crucial issue which you have to decide is, do you believe the evidence of the prosecutrix, that girl of 18 years of age? She gave evidence before you yesterday morning, and that is the issue which may be simply stated — was she telling you the truth. If she was, the offence was committed and by the accused, and therefore, as I repeat again, the issue is — do you believe her evidence".

The learned Judge then proceeds to deal with the question of corroboration of the complainant's evidence and states that although such corroboration is not essential in law it is in practice always looked for. He adds:—

> "In this case I must emphasize the warning because the evidence of the complainant was not given under the sanctity of an oath or affirmation. It was the unsworn or unaffirmed evidence of a girl of 18 years of age. And the reason for that warning members of the Jury, is, I think, fairly obvious, that comparatively young people are prone to imagine, to invent, to exaggerate — hence the reason for the warning that you must examine the evidence with the utmost care. On the other hand, members of the Jury, young minds are often far more receptive to incidents and circumstances, their observation possibly more acute, their memories more retentive, than possibly yours and mine, who are getting on somewhat in years. It has been said, members of the Jury, that charges involving sexual offences, such as rape, are easy to make, hard to prove, but harder still to disprove. You must, therefore, consider the evidence of the young girl with the greatest care and caution before you act upon it, but you are, members of the Jury, if you are absolutely convinced of its truth, of course at liberty to do so".

With all respect to the learned Judge the reference to the acuteness of observation and the retentiveness of memory of the young was perhaps somewhat unfortunate in its application to the complainant in that in one of the few matters in which her statement could be tested it would seem to be at least probable that she had told the Court an untruth.

At the trial when asked to account for the bruise upon her leg she stated that this was caused by the stranger striking her with a piece of stick, and that this was preliminary to the assault upon her which culminated in her rape. The statement itself lacks the ring of truth. Moreover in the Magistrate's Court she had stated — what, if the episode of rape took place at all, is far more probable — that the bruise was caused by her leg striking the table in the course of the struggle.

The learned Judge referred to this alleged discrepancy in his charge but appeared to suggest to the jury that they should dismiss it as of little consequence. No doubt, in many cases a discrepancy of that kind could properly be treated as unimportant: but when one is dealing with a bare narrative of rape, unsupported by any corroborative evidence, a misstatement of fact of this kind — if misstatement it be — assumes an importance out of proportion to its actual subject matter.

Learned counsel for the appellant complains, that, in effect, the passage in the charge which we have earlier quoted waters down the very necessary caution that was given to the jury. In this connection our attention was called to the case of *Dennis Gammon*,[2] where Lord Chief Justice Parker at page 160 deals with what he

described as the "watering down" of the caution given as to the rule of prudence requiring corroboration of a complainant of whatever age in sexual cases. It is true that in that case the comments of the Deputy Chairman went further than the passage to which we have referred in the charge of the learned trial Judge. It is, however, also true that the Lord Chief Justice referred to the evidence in the Gammon case as being "although uncorroborated, very strong". Nevertheless the conviction was set aside.

In the present case the evidence seems to us to be by no means strong and to have required the very closest examination before acceptance. It is in that light that we feel that it was unfortunate that the learned trial Judge qualified, or put a gloss upon, his very necessary warning that in practice corroboration in such a case is always looked for.

The necessity for this rule of prudence, which in practice should almost have the force of a rule of law in sexual cases, hardly needs restatement. There can be no class of case in which fabrication on the part of a complainant is so easy and refutation on the part of the accused so difficult as an allegation of rape. One has only to contemplate the possibility of a normal, albeit illicit, act of copulation being, after an interval of time for reflection, transmuted by the complainant into an act of rape.

It should surely be accepted now in criminal courts that the rule of prudence to which we have referred is one of such practical good sense that it should only be departed from in the most exceptional cases and it can certainly, in our opinion, not be said that the present is such a case.

Apart from all other considerations of the evidence in this matter there remains the considerable possibility, that, even if the stranger in question had forceful connection with the complainant on the day in question, he was unassisted by the appellant; and that the reason why the complainant introduced the appellant into the episode of rape was that he was the only one of the three person present on that day whom she was able to identify.

While no doubt the jury took an adverse view of the appellant and by their verdict expressed their satisfaction of his guilt, we consider that this is a case, for the reason which we have given, where it is unsafe to allow the conviction to stand. It is far better that occasionally a guilty man should escape when charged with a sexual offence that that any encouragement should be given to the view that the rule of prudence, which as Lord Goddard himself says is a sound rule in practice, can be disregarded, save in the most exceptional circumstances. The present is certainly not such a case and is, in our opinion, eminently one in which the jury should have been warned in the clearest terms, without qualification or gloss of any kind, of the risk that they would be running in acting on the uncorroborated evidence of the complainant.

It stands to reason that if the conviction as to abetment of rape is set aside that as to the robbery also cannot stand.

For these reasons the appeal must be allowed and the conviction and sentence set aside.

Appeal allowed.

Solicitors: *Marshall & Chung.*

PUBLIC PROSECUTOR v. CHUA SIANG KANG

[A. C. J. (Rose C.J.) October 20, 1960]

[Singapore — Magistrate's Appeal No. 184 of 1960]

Criminal Law (Temporary Provisions) Ordinance, 1955, s.49A(1)(f) — Police Supervision Order under — Direction prohibiting visit "at any time" — Whether compliance with direction limited to take effect "between such hours as may be specified."

Interpretation — Ambiguity — Raising genuine doubt as to which of two interpretations should be adopted.

A Police Supervision Order under section 49A(1)(f) of the Criminal Law (Temporary Provisions) Ordinance, 1955 must specify the hours between which the person affected must remain within doors or within the prescribed area. A direction, as in this case, that a person shall not *at any time* visit such an area does not fall within the scope of the sub-paragraph. An order restricting a person from entering certain area "at any time" does not comply with the requirement that a direction must be limited so as to take effect "between such hours as may be specified". It therefore follows that sub-paragraph (f) of section 49A(1) of the Ordinance, as it stands at present, does not entitle the Minister to impose condition (e) in the Police Supervision Order, restricting the respondent from entering a certain area "at any time". The appeal must therefore be dismissed and the decision of the learned District Judge affirmed.

MAGISTRATE'S APPEAL.

A. W. Ghows (Ag. Senior Crown Counsel) for the appellant.

Tan Boon Teik (Director of Legal Aid), *Amicus curiae.*

Rose C.J.: The charge against the respondent was as follows:—

"You are charged that you, on or about the 28th day of July, 1960, at about 5.05 p.m. being a person placed under Police Supervision by Order of the Minister of Home Affairs, made under Section 47 (b) Ordinance 26/55 and by reason of the restriction imposed on you that you shall not at any time visit the area bounded by, Stamford Road, St. Andrew's Road, High Street, Hill Street, Coleman Street and Armenian Street, were found visiting Chin Nam Street, which is bounded by the said boundaries, and you have thereby committed an offence under Section 49A(1)(f) and punishable under Section 49A(3) of Ordinance 26/55."

The respondent pleaded guilty but the learned District Judge treated that as amounting to no more than an admission of the facts and upon consideration of the legal implications in the matter acquitted the respondent. It is against that acquittal that the Deputy Public Prosecutor now appeals.

The relevant part of section 49A of the Criminal Law (Temporary Provisions) Ordinance, 1955 as amended by the Criminal Law